IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WA.No. 568 OF 2007()

AGAINST THE JUDGEMENT IN OP.26520/1999 DATED 17/01/2007

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APPELLANT: RESPONDENTS

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1. THE LIFE INSURANCE CORPORATION OF INDIA,
YOGAKSHEMA, JEEVAN BHIMA MARG, MUMBAI,
REPRESENTED BY THE MANAGING DIRECTOR.

2. THE CHAIRMAN,
LIFE INSURANCE CORPORATION OF INDIA,
YOGAKSHEMA, JEEVAN BHIMA MARG, MUMBAI.

3. THE ZONAL MANAGER,
LIFE INSURANCE CORPORATION OF INDIA,
ZONAL OFFICE, LIC BUILDING, ANNA SALAI,
CHENNAI, TAMIL NADU.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.S.EASWARAN

RESPONDENTS: PETITIONER

P.K.JOHN,
BRANCH MANAGER (RETD.), LIFE INSURANCE CORPORATION
OF INDIA, RESIDING AT HOUSE NO.29/1142,
JUSTICE LANE, JANATHA ROAD, VYTTILA, KOCHI-19.

ADV. SRI. GEORGE JACOB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON 29/03/2007 DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO.568 OF 2007

DATED THIS, THE 29TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellants are the respondents in W.P.(C) 26520/1999. The said writ petition was filed by the respondent herein seeking to quash Ext.P7 order passed by the second appellant and for a consequential declaration that the respondent is entitled to be promoted as Senior Branch Manager during the year 1992-93 and that he is entitled to be promoted to the higher cadres reckoning his seniority in the cadre of Branch Manager with effect from 6.5.1988 with all consequential benefits. In this connection, he placed reliance on Ext.P6 judgment rendered in O.P. 12519/1995 filed by him earlier. In that writ petition, challenge was against Exts.P2 and P5 produced therein, as per which, according to him, his legitimate promotion from eligible date was denied.

2. The respondent/writ petitioner entered service in 1965 as a Development Officer and was promoted as Assistant Branch Manager, on 20.5.1980. While, so, in the year 1991, there was a criminal case against

him and though the trial court convicted him as per judgment dated 30.12.1992, on appeal therefrom, the conviction was set aside and he was honourably acquitted. During the pendency of the appeal proceedings, however, invoking Clause 39(1)(g) of the Staff Regulations, he was dismissed from service on 12.11.1993, based on the conviction by the trial court. But subsequent to the appellate judgment, setting aside the conviction, he sought reinstatement by filing representations in this behalf. The inaction on the part of the appellants in not passing any orders on his representation compelled the respondent to approach this Court by filing O.P. 426/1994 which was eventually allowed by judgment dated 17.2.1994, directing his reinstatement and to grant whatever benefits he is entitled to. Thereafter, the authorities, by order dated 21.2.1994 ordered to reinstate the respondent in service simultaneously keeping him under suspension, pending disciplinary action to be initiated. Challenging the order of suspension, he filed O.P. 3546/1994, in which the order of suspension was stayed and eventually, quashed. Subsequently, by order dated 4.4.1994 he was reinstated in service and no further disciplinary action was initiated against him and eventually he retired from service. Actually the respondent was reinstated as Branch Manager, the post which he was holding at the time of suspension, pending criminal case. By that time several of his juniors were promoted as Branch Manager and he claimed seniority by filing representations which were directed to be disposed of in

O.P. 10305/1994. Subsequently, the Chairman of the Life Insurance Corporation of India issued orders granting promotion to the respondent as Branch Manager, retrospectively with effect from 6.5.1988. But as regards his past remuneration, it was ordered that though he was given seniority in the post of Branch Manager/Administrative Officer he will be given notional fixation of salary in the promoted post with effect from 6.5.1988 and he will be eligible for payment of salary and allowances in the promotional post only with effect from the date on which he assumed charge in pursuance of the said order. Since the promotion was limited only with effect from 6.5.1988 as Branch Manager and arrears of salary was also denied, he made representations; which did not yield any result. Again he filed O.P. 3607/1995 in which this Court directed consideration of his representation. Though the representation was subsequently disposed of, the respondent was not given any benefit as sought for. It was in such circumstances, that he filed O.P. 12519/1993. This Court, by Ext.P6 judgment, after referring to the chequered history of the case and taking into consideration the relevant aspects of the matter, found that when the respondent claims for promotion from 1985, his juniors who did not get such promotion from 1985 and persons juniors to such immediate junior shall also be heard, in the absence of any such persons in the party array, the respondent's claim for promotion as Branch Manager from any date earlier than 6.5.1988 could not accepted and the decision that he is not

entitled for retrospective promotion from 1983 onwards as Branch Manager was confirmed. In other words, his promotion as Branch Manager from 6.5.1988 as ordered by the authorities stood confirmed. As regards his claim for arrears of salary with effect from 6.5.1988 as Branch Manager, it was held that in the absence of any dispute that a competent criminal court have acquitted him of the charges, no authority could attribute any adversity to him and therefore, the denial of salary as contained in the order under challenge in the said original petition was held to be illegal and it was quashed. As a consequent follow up, in the concluding para 5 of the judgment it was held that the respondent had been given the entire seniority in the category of Branch Manager from 6.5.1988 and he is entitled to be considered for promotion along with his juniors in the category of Branch Manager for further promotion depending upon his suitability and other criteria in terms of the regulation governing promotion. Accordingly, the authorities were directed to consider his case for promotion and to pass orders, though he retired, for further categories higher than that of Branch Manager, in accordance with the regulation, within the time limit prescribed therein.

3. Pursuant thereto, the second appellant constituted an Assisting Committee in accordance with the provisions contained in the staff regulations to consider the suitability of the respondent for promotion to the cadre of Senior Branch Manager. The Assisting Committee recommended

that he is not suitable to be promoted in the cadre of Sr. Manager from 1993 onwards, however, placed him on a higher pay scale for the year 1996-97, which was accepted by the second appellant as per Ext.P7 order produced in the present writ petition. The writ petition was filed challenging the said order which was allowed by the learned Single Judge. The appellants contended that the case of the respondent/employee was considered along with his juniors and based on his confidential records, the Committee having found that he is not suitable for promotion, the same is not liable to be interfered with by this Court. After placing reliance on the judgment Ext.P6 and the directions contained therein to the effect that the respondent be treated as qualified for being considered to the promotion as Senior Branch Manager, reckoning his seniority from 6.5.1988 in the cadre of Branch Manager, the learned Single Judge held that Ext.P7 impugned in the writ petition was not justifiable. Though, according to the appellants the Confidential Report of the respondent/writ petitioner was assessed prior to the order dated 22.11.1994, for the period 1992-93, the learned Single Judge found that for that period no adverse remark is contained in his Confidential Report and it ought to have been considered in the light of the provisions contained in Clause 38(a) of the Regulations. Reliance was also placed on the decision of the apex Court in **Central Council for Research in Ayurv**eda and **Siddha v. Dr. K. Santhakumari** ((2001) 5 SCC 60). After referring to Clause 7(3) of the Regulations, it was

held that promotion shall be based on merit and suitability of the candidate which may be judged by Confidential reports or examinations and in the case of the petitioner, only confidential reports have been considered by the authorities. Reliance was also placed on the decision of the apex Court in **State of Rajasthan v. Sriram Verma ((1996) 6 SCC 493).** Accordingly Ext.P7 was quashed and it was declared that the respondent is entitled to be considered for promotion reckoning his seniority in the cadre of Branch Manager with effect from 6.5.1988 in par with his juniors. The appellants were also directed to pass consequential orders granting monetary benefits to the respondent, within a time frame. Challenging the said judgment, the present appeal is filed.

4. Learned senior counsel Sri. T.P. Kelu Nambiar, appearing for the appellants contended as follows: The power of judicial review under Article 226 of the Constitution of India is limited and the learned Single Judge has erroneously exercised his powers of judicial review in allowing the writ petition and directing the appellants to grant the benefits to the respondent. He also contended that no employee has got a right of promotion and he has only a right to be considered for promotion and in this case, the competent authority having considered his request and on such consideration, passed Ext.P7, the decision rendered is beyond judicial review. The power of judicial review is limited to the extent of consideration as to whether the procedure laid down by the Rules or

Regulations for promotion has been followed and Regulation 7(3) of the Staff Regulations lays down the procedure for promotion which in turn says that promotion of the staff shall be based on merit, suitability and seniority. Merit and suitability should be judged by confidential report, interview or examination. Admittedly, in the present case, only Confidential Reports are available which should be judged by the Assisting Committee appointed under Regulation 7(2) of the Staff Regulations, 1960, which will recommend its conclusion to the appointing authority who may consider the same and pass orders on the request for promotion. However, Ext.P6 judgment directs the appellants to reckon the respondent's seniority with effect from 6.5.1988 for further promotion to the categories higher than that of Branch Manager, depending upon his seniority with effect from 6.5.1988 and other criteria in terms of the regulation governing promotion. Ext.P6 judgment accordingly directs consideration of his claim for promotion in accordance with the Staff Regulation and once the Committee recommended that the respondent was not suitable for promotion to the cadre of Senior Branch Manager during the period 1992-93, 1993-94, 1994-95 and 1995-96, there arise no occasion for any judicial review in such matters. He also placed reliance on some of the decisions of the apex court in support of his contention. It is further contented that as per Regulation 38(a) which only provides that when an employee is honourably acquitted, the full pay and allowance which he would have been entitled to if he had

not been dismissed, removed or suspended less the subsistence allowance may be granted by the authority, whose decision shall be final and there is no mandate under Regulation 38, which requires the appellants to consider the employee for promotion based on his seniority as soon as he is honourably acquitted from all the charges by the competent criminal court.

5. Per contra, learned counsel appearing for the respondent would contend that when it admits of no doubt that in the present case his claim for promotion was considered solely based on Confidential Reports and in the absence of any adverse remarks or any other materials in the Confidential Reports so as to disable him from claiming promotion, the decision of the Committee recommending not to give promotion is perse illegal as the exercise was nothing but an empty formality in the eye of law and in such circumstances, it cannot be said that it is beyond the scope of judicial review under Article 226 of the Constitution of India, to set at right the illegality so committed and to grant necessary relief. He also submitted that when once the respondent is honourably acquitted, even as contemplated under Regulation 38, he is entitled to full salary and allowances less the subsistence allowance already paid especially when his suspension was pending a criminal case and there was no independent disciplinary action against him. The very basis of the suspension became illegal when the criminal case ended in acquittal honourably. It was also contended that when an employee is kept under suspension for no fault of

his and when eventually the case ended in his acquittal, the promotion due to him cannot be denied. According to him, subsequently, further promotions were due to the post of Divisional Manager which was also denied to him and even though he has retired from service, he is entitled for all consequential benefits, since once it is held that the suspension is bad in law, all consequential benefits arising therefrom should automatically follow.

6. We have heard both sides. By Ext. P6 judgment rendered by this Court which has become final, the claim for promotion of the petitioner with reference to his seniority from 6.5.1988 along with his juniors to the cadre of Branch Manager and for further promotion depending upon his suitability and other criteria was directed to be considered. Though he had retired, his claim for promotion to categories higher than that of Branch Manager, depending upon that seniority from 6.5.1988 was also directed to be considered. It was pursuant to Ext.P6 judgment that Ext.P7 was passed. It is stated in Ext.P7 that a Committee was constituted for considering his promotion, in the light of the Confidential Reports and on appraisal of his performance in the cadre of Branch Manager for the years 1994-95, 1995-96 and 1996-97 as also for the years 1985-86 to 1994-95, the Committee did not find him suitable for promotion to the cadre of Senior Branch Manager in any of the promotion years 1992-93, 1993-94, 1994-95 and 1995-96. But the committee considered his case for placing him in the scale of pay

applicable to the higher cadre of Senior Branch Manager from 1997 and found him suitable for the same. Accordingly, he was sanctioned the scale of pay applicable to the post of Senior Branch Manager with effect from 21.1.1996. Since he has already retired from service as Branch Manager, the question of considering his case for further cadre of Divisional Manager did not arise. But nothing is stated regarding the monetary benefits due to him even based on such fixation to the scale of Senior Branch Manager with effect from 21.5.1996. The learned Single Judge, after referring to the chequered history of the case and various orders passed by this Court especially, Ext.P6 judgment rendered prior to Ext. P7 order impugned in the present writ petition, found that as per Ext.P2 order dated 22.11.1994 he was promoted as Branch Manager with effect from 6.5.1988 and given the benefit of notional fixation of salary of the promotional post with effect from 6th May, 1988, he was ordered to be eligible for payment of the salary and allowances of the promotional post only with effect from the date on which he assumed charge of the promotion post in pursuance of the order. In Ext.P3 representation before the Chairman, the respondent represented pointing out the fact that he was acquitted by the appellate court and entitled for promotion from the cadre of Branch Manager, it was rejected as per Ext.P5 order dated 26.5.1995. It was then that he filed O.P. 12519/1995 in which Ext.P6 judgment was rendered by this Court, directing to consider his seniority in the cadre of Branch Manager with effect from 6.5.1988 in

accordance with the Regulations. Ext.P7 order passed by the appellants were then considered by the learned Single Judge. In that regard, the stand taken by the appellants that the Confidential Reports of the respondent was assessed prior to the order, ie. for the period 1992-93 and hence admittedly prior to that period there was no adverse remark contained in the Confidential Report of the respondent. The case of the respondent, in the absence of any other materials except the Confidential report and in the absence of any adverse remarks in the Confidential Report prior to 1992-93, the decision rendered in Ext.P7 is liable to be quashed was accepted by the learned Single Judge and directed the appellants to give promotion reckoning his seniority in the cadre of Branch Manager with effect from 6.5.1988 on par with his juniors and to issue consequential orders granting monatary benefits. The appellants alone have filed this appeal. The direction issued by the learned Single Judge, its justifiability or otherwise alone therefore arise for consideration.

7. The copies of Confidential Reports for the period from 1.1.1992 to 31.12.1992, 1.1.1994 to 31.12.1994, 24.12.1994 to 23.6.1995, 24.6.1995 to 24.12.1995 and from 24.12.1995 to 30.9.1996, were made available to us. On a perusal of the same, it is seen that as respect the period from 1.1.1992 to 31.12.1992 efficiency of the respondent in both administration and development sides were certified as good. Regarding his present state of efficiency and work, it is remarked that there was a slight decline in the

development side on account of transfer of a few Divisional Officers. The Officer had handicapped because of the transfer of five Development Officers out of the Branch affected the development wing. As regards "Rating", it is stated that he had been striving hard to motivate the Agents and Development Officers, that the joint calls undertaken by him had been highly commended by Agents and Development Officers, that he had established good contact with leading personalities in the Branch area and that he had the knack of spotting potential business opportunities and guiding Agents to tap them. As regards his outstanding contribution, it was remarked that two Development Officers who did more than two Crore business have admitted that he was instrumental in their achievement. As against Column 5 for making remarks regarding Growth Potential, it is stated that he will be highly successful in the Development side.

8. This Confidential Report supports the case of the respondent that not only that there was no adverse remarks but the report actually appreciated his commendable work. It is not seriously in dispute that any of the confidential reports immediately prior thereto did have any such adverse remark.

9. In Column V (3) of the subsequent Confidential Report for the period from 1.1.1994 to 31.12.1994 also the authorities recommended his promotion. Regarding his performance during the period, under Column VIII (3) it is remarked as follows:

> "The Officer has been completely exonerated in a discip. case and promoted w.e.f. 4/88. He retires in 1996. He may be promoted in 5/95 as Sr. Branch Manager. This will be adequate compensation to an Officer whose promotion was kept in abeyance since 1980. Rating B+."

For the period from 24.12.1994 to 23.6.1995, while he was looking after the training needs of the agents he was rated thus:

> "He has turned out a satisfactory performance in his area of operation. I would rate him as "Well Above Average". B+"

10. For the period from 24.6.1995 to 24.12.1995 as per the rating it is remarked that he is conscious about the achievement of the Branch in N.B.Front and constantly, strives hard for improvement of N.B., that he is effective in administration, that he gets the job done by tactful manner., that he keeps good relation with the members of staff and also field workers and that his performance is highly satisfactory. As per the remark, he deserves 'Well above Average' rating B+.

11. As regards his outstanding contribution, it is stated that the position of the Branch has been retained excellent during the entire year and there was no arrears of work in any department of the branch. The Agents and Divisional Officers were kept highly satisfied and the morale of the members of the staff was also kept high. In spite of the difficulties encountered by the agitation of Class III & IV employees he managed the

Branch very well.

12. In yet another report for the period from 24.12.1995 to 30.9.1996 also he has been rated above average. As admitted in this case, Confidential Reports of the Officer concerned being the only material based on which assessment was made, there cannot be two opinion regarding his claim for promotion based on the performance as appraised by his superiors as revealed by the Confidential Reports. In the factual situation, therefore, this Court, could certainly say that denial of promotion based on the Confidential Report cannot stand scrutiny before any court of law and accepted. It cannot be said that there was any assessment at all by the Committee. It is true that in the matter of assessment, it is always for the employer to consider the case of the employee for promotion and this court may not in exercise of judicial review, interfere with such an assessment, provided, such assessment has been proved to have been done in the manner as provided by the Regulation. But by saying that his Confidential Reports were assessed and found that he is not suitable for promotion by itself cannot be accepted as sufficient compliance of the procedure as established by law. Otherwise, even in the absence of anything on record, one could escape from being examined by a court of law even in a case where no assessment as such could be said to have been done as in the present case. The question, therefore, is whether in the nature of the Confidential Report as referred to above, could any reasonable

man say that he is not eligible for promotion and is there anything at all in the Confidential Report warranting such conclusion? To our mind, it appears that there is absolutely nothing on record to show that the assessment made had any semblance of a proper assessment as is required to be made in the matter of promotion of an employee governed by the Regulations. The exercise so made is nothing but an eye wash and a lame excuse to deny the promotion legitimately due to him. Hence we are of the considered view that the learned Single Judge was perfectly justified in holding that there was no assessment for the year 1992-93 and there were no adverse remarks in his Confidential Reports.

13. Coming to the jurisdiction of this court, some of the decisions on which reliance was placed by the appellants, in our considered view, has no relevance to the factual situation present in the case. In **Anil Katiyar (Mrs.) v. Union of India** (1997(1) SCC 280) it was held that having regard to the confidential procedure which is followed by the DPCs in the Union Public Service Commission for giving overall gradings, the grading of the former candidate by the DPC as "very good" instead of "outstanding", is not arbitrary and hence no ground is made out for interference with the selection. That was a case where the question as to whether the grading made as " very good" instead of "outstanding" could be said to be arbitrary, arose for consideration. **State of West Bengal v. Manik Chandra Biswas** (1999 SCC (L & S) 1160) was a case for

promotion on the basis of merit-cum- seniority. After considering the merits of all candidates the Public Service Commission superseded the respondent therein and selected his juniors for promotion. As could be seen, from para 6 of the judgment, the question of suitability of the candidate to the promotional post was judged by the Public Service Commission, an expert body in that respect and on consideration of all material facts, it came to the conclusion that the respondent was not suitable for the promotional post. It was held that mere absence of any adverse remark by itself is not a reason to take a different view. **Orissa Small Industries Corpn. Ltd. v. Narasingha Charan Mohanty** ((1999) 1 SCC 465) was a case where the DPC, after considering the fact that the respondent therein had not served as Joint Manager though he had been given notional promotion and therefore did not have necessary experience, found that he was not suitable for promotion. It was held that the court cannot assess respective merit of the candidates for adjudging the suitability for promotion. In **Nutan Aravind v. Union of India ((1996) 2 SCC 488) ,** it was held that when a high level committee has considered the respective merits of the candidates, assessed the grading and considered their case for promotion, the Supreme Court cannot sit in appeal over its assessment.

14. Thus none of the above decisions would support the contention of the appellants that in the factual situation, the interference by the learned

Single Judge was in any way beyond the scope of judicial review. On the other hand, in **State of Rajasthan v. Sriram Verma ((1996) 6 SCC 493)** it was held that in cases of promotions on the basis of merit or merit-cum-seniority/merit-cum-suitability the procedure of selection should be fair so as to inspire confidence in all concerned. It suggested all the Governments to provide either by amendment of Rules or by general instructions that in the matter of promotions on the basis of merit or merit-cum-seniority/merit-cum-suitability, the selecting authority should follow the method of grading all the candidates appearing before them.

15. In such circumstances we find no reason to interfere with the view taken by the learned Single Judge that Ext.P7 is liable to be quashed and that the respondent herein is entitled to be considered for promotion with reference to his seniority from 6.5.1988 in par with his juniors.

16. We noticed that the learned Single Judge has also directed the appellants to issue consequential orders granting monetary benefits to the respondent. In this regard, it has to be observed that payment of emoluments of higher post with retrospective effect on account of due promotion from an earlier date cannot automatically be granted at the first instance by the court, rather it is a matter to be left to be decided by the authorities at the first instance. The question as to whether he has actually worked in the higher post and whether the principle of "no work no pay" would apply and other factors may have to be considered by the authorities

before a decision is taken.

17. In **Virender Kumar v. Avinash Chandra Chadha** ((1990) 3 SCC 472, it was held by the apex Court that there was no equity or justice in favour of the respondents for monetary benefits having due regard to the factual situation present there. In that case, the apex court distinguished the decision in **P.S. Mahal v. Union of India** ((1984) 4 SCC 545: 1985 SCC (L&S) 61) where payment of higher emoluments with retrospective effect on account of deemed promotions of earlier dates was directed. In **State of Haryana v. O.P. Gupta** ((1996) 7 SCC 533) it was held that the promotees are not entitled to the arrears of pay from the deemed date on the principle "no pay for no work". We have also noticed a Bench decision of this Court in **State of Kerala v. Bhaskaran Pillai** (2003 (1) KLT 60) wherein it was held that the normal rule must be that where there is no fault on the part of the Officer concerned, he must be paid the monetary benefits due to him consequent to the retrospective promotion. In appropriate cases, it could be denied to him for valid reasons. It was held, in the circumstances as noticed by the court, that the doctrine of " no work no pay" cannot be applied if the person is entitled to promotion and he was denied such promotion earlier but granted promotion with retrospective effect. Reference was also made to the case of **Union of India v. K.V. Janakiraman (AIR 1991 SC 2010)** and also the decision of

the apex court in **State of A.P. v. K.V.L. Narasimha Rao** (1999) 4 SCC 181) in support of the view taken.

18. In the light of the above decisions, the entitlement for arrears of wages based on deemed promotion can be denied only when there are valid reasons to do so, since the normal rule would be to grant him such emoluments when promotion was denied at the first instance for no fault of the employee; but was granted later with retrospective effect. Whether or not valid reasons exist for denial of such emoluments is therefore a matter which at the first instance should be considered by the authority after hearing the petitioner as well. We are therefore direct that the question regarding entitlement for back arrears will be considered by the second respondent after affording an opportunity of being heard to the petitioner and pass appropriate orders.

19. Though the petitioner had a contention that he is also entitled to promotion to the post of Divisional Manager, no such direction was issued by the learned Single Judge and in the absence of any appeal by the Officer concerned, we do not think that we will be justified to consider such claim raised on behalf of the respondent herein.

20. In the result, the writ appeal is partly allowed and the judgment of the learned Single Judge to the extent it directs payment of emoluments is set aside. The matter is required to be considered as directed above by the second respondent afresh and pass appropriate orders. The second

respondent shall also consider and pass orders (after refixing the last drawn pay) on the retiral benefit payable to him on that basis. The above decision shall be complied with as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-